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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,182	03/02/2004	Paul Gaudron	POF-0008	4898
23413	7590	05/02/2005	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			REESE, DAVID C	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/792,182

Applicant(s)

GAUDRON ET AL.

Examiner

David C. Reese

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment: 3/22/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to Applicant's amendment filed 3/22/2005.

Status of Claims

- [1] Claims 1-14 are pending.

Claim Objections

- [2] Applicant has addressed all objections to the Claims in the amendment filed 3/22/2005.
Accordingly, the Examiner has withdrawn all objections to the claims.

Claim Rejections - 35 USC § 102

- [3] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for

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purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[4] Claims 1-6, 8-12, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thurner, 4,802,802, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Thurner is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Thurner teaches of a powder driven pin-type fastener assembly (Fig. 2) comprising:

a powder driven pin-type fastener (4, in column 1 beginning with line 61, "...to provide an attachment unit for insertion into a receiving material using an explosive powder charge...");

a barrier (3, in column 1, "...with the unit made up of a nail with a head at one end and a sleeve positioned on the nail...") engaged with the powder driven pin-type fastener (4) via an aperture (inside of 3), the aperture being configured and dimensioned to create an interference fit with the fastener (4 in 3 in Fig. 2, and in column 2, line 38, "is that the sleeve is fixed in the frictional locked manner with the shank of the nail...") thereby preventing scraping of said coating during rapid movement of the fastener to a workpiece; and

a washer (14) having an opening therein (inside of 14), the opening receiving the barrier (3):

The above underlined segment is an example of intended use, as it does not further limit the structure of the claimed invention. Note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*. Thus, in the instant case, the invention from Thurner needs only to have the capacity to perform the above-mentioned function, and as the structure of the sleeve presented by Thurner does indeed possess the ability to prevent scraping of a coating of the fastener during insertion.

As for Claim 2, Thurner discloses a powder driven pin-type fastener assembly (Fig. 2) wherein the barrier (3) includes an outside dimension and configuration calculated to form an interference fit with the washer opening (4 in 3 in Fig. 2, and in column 2, line 38, "is that the sleeve is fixed in the frictional locked manner wit the shank of the nail...").

As for Claim 3, Thurner discloses a powder driven pin-type fastener assembly (Fig. 2) wherein the barrier (3) includes at least one detent (9) to secure the barrier (3) in the washer opening (14).

As for Claim 4, Thurner discloses a powder driven pin-type fastener assembly (Fig. 2) wherein the at least one detent (9) is a ridge (9).

As for Claim 5, Thurner discloses a powder driven pin-type fastener assembly wherein the barrier comprises a tubular body (3).

As for Claim 6, Thurner discloses an assembly unit wherein the barrier further comprises a flange extending radially outwardly from the tubular body (7).

As for Claim 8, Thurner discloses a powder driven pin-type fastener assembly (Fig. 2) wherein the barrier is a single unitary piece of plastic (3).

As for Claim 9, Thurner discloses a pin-type fastener coating material protection barrier (3 in Fig. 2) comprising:

a body (3) having one or more outside dimensions calculated to engage an opening in a washer in an interference fit sufficient to retain the washer (14) on the body in an assembly (4 in 3 in Fig. 2, and in column 2, line 38, "is that the sleeve is fixed in the frictional locked manner wit the shank of the nail...");

an aperture in the body (inside 3) extending at least substantially through the body (3), said aperture (inside 3) in the body (3) having a dimension and configuration to create an interference fit with a fastener (4 in 3 in Fig. 2, and in column 2, line 38, "is that the sleeve is fixed in the frictional locked manner wit the shank of the nail...") said barrier protecting a coating on the fastener to prevent scraping of said coating during rapid insertion of the fastener to a workpiece.

The above underlined segment is an example of intended use, as it does not further limit the structure of the claimed invention. Note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*. Thus, in the instant case, the invention from Thurner needs only to have the capacity to perform the above-mentioned function, and as the structure of

the sleeve presented by Thurner does indeed possess the ability to prevent scraping of a coating of the fastener during insertion.

As for Claim 10, Thurner discloses a pin-type fastener coating material protection barrier (3 in Fig. 2) wherein the body (3) further comprises a flange (7) extending radially outwardly of the one for more outside dimensions of the body (3).

As for Claim 11, Thurner discloses a pin-type fastener coating material protection barrier (3 in Fig. 2) wherein the body (3) further includes at least one detent (9).

As for Claim 12, Thurner discloses a pin-type fastener coating material protection barrier (3 in Fig. 2) wherein said detent is a ridge (9).

As for Claim 14, Thurner discloses a pin-type fastener coating material protection barrier (3 in Fig. 2) wherein the barrier (3) is constructed at least in part of a plastic material (3).

Claim Rejections - 35 USC § 103

[5] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[6] Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thurner, 4,802,802, in view of Lenac et al., US-5,860,780.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

Turner teaches of the above claims.

However, Turner fails to disclose expressly that the sleeve, (3), can be made out of a lubricious material.

Lenac et al. teaches of a self-lubricated thrust rivet "...lubricious bearing material such as an organic polymer or plastic material," continuing with part 2 line 25, "...in which the sliding layer is adapted to engage...to provide for substantially maintenance free sliding movement of the member..."

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify the bush, (18 in Fig. 1), as taught by Turner, to incorporate an embodiment made of a lubricious material as taught by Lenac et al., in order to create a barrier that possesses the capacity of providing maintenance free movement of one element relative to another, as well as deterring excess friction when being manipulated or inserted into the washer and/or fastener.

Response to Arguments

[7] Applicant's arguments filed 3/22/2005 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. To begin, applicant states that Hartmann et al. taught of an assembly comprising components such as threads that were additional structure not

required by applicant's invention. It must be noted that Hartmann et al. discloses the invention as claimed (the pin-type fastener was not claimed in the first set of claims). The fact that it discloses additional structure not claimed is irrelevant.

Secondly, in response to Applicant's argument that Hartmann et al. does not include certain features of Applicant's invention (the desirability of avoiding the scraping of a pin-type fastener fired into a workpiece from a powder driven setting tool), the limitations on which the applicant relies (above in parenthesis) were not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable.

Constant v. Advanced Micro-Devices Inc., 7 USPQ2d 1064.

Lastly, with regard to the amended claims, it is once again important to point out that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). That is, in the instant case, the way the claims have been amended (thereby preventing scraping of a coating on the fastener during rapid movement of the fastener into a workpiece) adds no additional structure to the fastener assembly, and when the claim is read in the broadest reasonable interpretation possible, the structure of Hartmann et al. and Thurman both provide a barrier or sleeve with the structure which is enabling to some degree to deter possible scraping of a coating on a fastener that might result, most importantly, from the barrier or sleeve not being present in the given environment in the first place.

[8] Applicant's arguments filed 3/22/2005 regarding rejections under 35 U.S.C. 103 have been fully considered but they are not persuasive. This is due to the lack of argument presented.

Also, additional art has been presented, similar to that as shown by Turner, that is more specific regarding powder-driven fastener assemblies.

Conclusion

[9] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

[1] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272- 7082. The examiner can normally be reached on 7:30 am - 5:00 pm M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,
David Reese
Examiner
Art Unit 3677


ROBERT J. SANDY
PRIMARY EXAMINER